

*NO COPY OF THIS TRANSCRIPT MAY BE MADE PRIOR TO FEBRUARY 7, 2019

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

* * * * *

UNITED STATES OF AMERICA

v.

KURT CARPENTINO

* * * * *

*

*

1:17-cr-157-PB

June 11, 2018

8:56 a.m.

*

*

TRANSCRIPT OF JURY TRIAL DAY 4
BEFORE THE HONORABLE PAUL J. BARBADORO

Appearances:

For the Government:

Georgiana L. Konesky, AUSA
Seth R. Aframe, AUSA
United States Attorney's Office

For the Defendant:

Dorothy E. Graham, Esq.
Jonathan R. Saxe, Esq.
Federal Defender's Office

Court Reporter:

Liza W. Dubois, RMR, CRR
Official Court Reporter
United States District Court
55 Pleasant Street
Concord, New Hampshire 03301
(603)225-1442

I N D E X

<u>CLOSING ARGUMENTS:</u>	<u>PAGE</u>
By Ms. Konesky	13
By Ms. Graham	28
By Mr. Aframe (Rebuttal)	35
JURY INSTRUCTIONS	39
VERDICT	61

1 P R O C E E D I N G S

2 THE CLERK: Court is in session and has for
3 consideration a jury trial in United States of America
4 vs. Kurt Carpentino, criminal case number
5 17-cr-157-1-PB.

6 THE COURT: The defendant isn't present. He's
7 being brought in. It's five minutes to 9:00, four
8 minutes to 9:00. I don't want to delay the jury. I'm
9 going to talk to you about a jury instruction question
10 you submitted to me. I don't believe the defendant has
11 the right to be present for that, but I will rehearse
12 exactly what happened as soon as we get him in here.
13 Okay?

14 MR. SAXE: That's fine, your Honor.

15 THE COURT: Okay. So help me understand the
16 problem that you are seeking to address with your first
17 of your two proposed changes. I agree to give the
18 second, I'm including that in the draft.

19 MR. SAXE: Okay. I just think that ours is a
20 little less likely to confuse the jury. That's all.
21 Because --

22 THE COURT: I know, but I want you to tell
23 me, I'm confused that the jury might do X if you give
24 your instruction and my instruction will help address X
25 problem.

1 MR. SAXE: Okay. I think if you say that --

2 THE COURT: I don't know. Am I being clear?

3 MR. SAXE: Yes.

4 THE COURT: When there's something wrong with
5 my instruction, in your view, and your view is it's more
6 confusing than yours and I'm simply asking you,
7 confusing about what.

8 MR. SAXE: I understand.

9 THE COURT: Okay.

10 MR. SAXE: Okay. And I don't think that the
11 proposed instruction is illegal or it isn't to the point
12 that it's legally wrong, I just think ours is clearer.
13 So --

14 THE COURT: I understand. I'm trying to get
15 at -- let me try one last time. Okay?

16 I am trying to accommodate whatever your
17 concern is. I have a problem with your proposed
18 instruction that I will explain to you, but I don't
19 understand the problem that your proposed instruction is
20 trying to address. I have a guess about it. If you
21 want, I'll speak to you about it and you can tell me
22 whether it's right.

23 I think you're picking up on something that
24 the prosecutor said as we were going out the door on
25 Friday after having had our charge conference where the

1 prosecutor said, speculate about this, suppose -- should
2 the jury be instructed that all that is necessary is
3 that the person be charged with an offense, not that he,
4 in fact, committed the offense. And your fear is that
5 the jury might construe my instruction as permitting
6 them to find the defendant guilty under, say, the
7 following extreme fact pattern.

8 Suppose the defendant and Ms. Harvey decided,
9 let's fool your mom and the police into thinking that
10 you and I have a sexual relationship when we don't; I'm
11 going to take you across state lines, you're going to
12 then go to the Vermont police and say that Mr. -- what's
13 your client's name --

14 MR. SAXE: Carpentino.

15 THE COURT: -- Carpentino had -- just had sex
16 with me; we'll then recant that after the charge is
17 brought.

18 Under the prosecutor's crazy theory of the
19 case, that would be a crime that would be prosecutable
20 under the statute. I think that's a crazy theory of the
21 case and if that's the concern you're getting at, I
22 think I have a way of addressing it.

23 Is that the concern?

24 MR. SAXE: Yeah. And I did look at the --
25 when I looked at the jury instructions in the

1 First Circuit, there wasn't one. So I looked at a bunch
2 of other circuits.

3 THE COURT: Yeah.

4 MR. SAXE: Some of them use your proposal.

5 THE COURT: Yeah, is that what you're
6 concerned about?

7 MR. SAXE: Yes.

8 THE COURT: Okay. All right.

9 So let me suggest -- the problem I have with
10 your proposed instruction, okay, is it a crime for
11 Ms. Harvey to have sex with someone over the age of 19.
12 Is she a criminal for doing that?

13 MR. SAXE: No.

14 THE COURT: Okay. So she couldn't be charged
15 with a crime for doing what she allegedly did here,
16 right?

17 MR. SAXE: I understand, yes.

18 THE COURT: All right. So we agree on that,
19 right?

20 So if I read your instruction, it is -- what
21 you're proposing is --

22 MR. SAXE: Fourth line down --

23 THE COURT: Wait a second. Wait a second.

24 Third, the defendant intended that Harvey
25 engage in sexual activity which, if it had occurred, is

1 a crime in Vermont.

2 That read literally could be understood by a
3 jury to mean that if Ms. Harvey didn't commit a crime in
4 Vermont, it wasn't -- if the act that they were
5 intending to engage in would not be a crime by
6 Ms. Harvey, then you couldn't find the defendant guilty.

7 The statute is phrased in awkward language
8 because it's trying to address a particular -- a
9 combination of problems, as I see it. One is a
10 prostitution problem, but the other is what if you take
11 a minor across state lines to have sex with them. Okay?
12 And that's why they used the phraseology they used, the
13 "any person" language.

14 And both the government's original instruction
15 and your proposed instruction suffer from a fatal
16 deficiency and I don't think the jury would do it, but
17 once they get my instructions, we will never know how
18 they interpret them. So it's important that I try to
19 craft them in a way that is legally correct.

20 And the "any person" language -- yeah, bring
21 him in.

22 The "any person" language, it's vital to the
23 statute because it requires that Ms. Harvey engage in
24 conduct which could be prosecuted as an offense against
25 any person. And so it captures the pimp who brings a

1 child across state lines, it captures a person who
2 brings a child across state lines to have sex with
3 someone else, and it captures a person who brings
4 someone across state lines to have sex with them
5 themselves. And it is not a defense to the crime that
6 the child who engages in the sexual act could not be
7 prosecuted. Are we all in agreement about that --

8 MR. AFRAME: Yes.

9 THE COURT: -- basic proposition?

10 MR. SAXE: Yeah, I agree.

11 THE COURT: Okay. So here's what I propose to
12 address your problem -- your instruction as proposed is
13 deficient. I played around with ways to address the
14 concern that I thought you had and all of them
15 involve -- that I could think of involve multiple
16 sentences that make very confusing a problem which isn't
17 really a problem here.

18 So what I would say is this. I can add one
19 word that I think could address the problem. Here's
20 what I propose.

21 Third, at the time of the transportation, the
22 defendant intended that Harvey would engage in sexual
23 activity for which any person could be successfully
24 prosecuted under Vermont law.

25 That eliminates the prosecutor's crazy problem

1 of there's probable cause to believe you committed the
2 crime under Vermont law even though you didn't commit
3 the crime -- you didn't intend to commit the crime under
4 Vermont law, you intended to create circumstances that
5 gave rise to probable cause to believe that a crime had
6 been committed and thereby you committed the crime.

7 I'm not buying that. Okay? The prosecutor's
8 going to show me some --

9 MR. AFRAME: I'm not arguing that, just to be
10 clear.

11 THE COURT: Okay. That's what you were
12 saying.

13 MR. AFRAME: I was just talking about it.

14 THE COURT: Okay. But I think that's what
15 prompted this discussion.

16 So do you think that successfully prosecuted
17 precludes the argument that you were speculating about?

18 MR. AFRAME: Yes.

19 THE COURT: Yeah. So if I put that in, okay?

20 MR. SAXE: That's fine.

21 THE COURT: All right. That's good.

22 Any other issues?

23 MR. SAXE: Just the second one, which you said
24 you agreed you would put in --

25 THE COURT: We agreed.

1 MR. SAXE: -- regarding the testimony.

2 THE COURT: Yeah. All right.

3 So could you bring this upstairs to my -- to
4 my assistant and have her -- just this line -- see
5 third? -- make this change, which really involves just
6 putting in the word successfully before prosecute.

7 MR. AFRAME: Can I ask one question before you
8 send that away?

9 THE COURT: Yes.

10 MR. AFRAME: Did you add the part about
11 consent that we talked about?

12 THE COURT: Yes. So let me just -- engaging
13 in a sexual act with a child who is under the age of 16
14 is a crime in Vermont regardless of whether the child
15 consents to the sexual act.

16 MR. AFRAME: Right.

17 THE COURT: All right. Can you bring that up?
18 Do you understand what I'm asking her to do? Put the
19 word successfully in front of prosecute there, print out
20 five copies of the instructions, and she needs to do a
21 verdict form for me also.

22 THE LAW CLERK: Okay.

23 THE COURT: Okay. Everybody good?

24 MR. SAXE: If I could just have one second.

25 THE COURT: Yes. Let me -- let me just --

1 Mr. Carpentino, over the weekend, your lawyers
2 sent an email to the clerk in which they proposed a
3 last-minute change to the jury instructions. It was
4 of two parts.

5 The second part addressed a standard
6 instruction that a court gives when a defendant
7 testifies, as you did, and I agreed to give that
8 instruction in full that they are proposing.

9 The first part of it was addressed to the
10 element of what your intention had to be in order for
11 you to be guilty of a crime and the -- your lawyers
12 agreed that I used the phraseology in the statute in my
13 proposed instruction, but they wanted to address a
14 particular concern because the way the statute is
15 worded, they were concerned that a jury might
16 misunderstand the way I instructed the jury to -- and
17 convict you based on the mistaken premise that if you
18 intended to engage in activity for which you could be
19 charged with a crime, even if you didn't intend to
20 engage in activity for which you could be convicted of a
21 crime, they might find you guilty.

22 I don't think that is a plausible theory under
23 which you could be found guilty and so they proposed an
24 instruction to try to cure that problem. I have -- the
25 instruction as they proposed it, in my view, creates

1 another problem, confusing problem, and I tried to
2 address their concern through an alternative method,
3 which was to put the word successfully in front of
4 prosecuted so that it's clear to the jury unless you
5 intended to engage in conduct which would, in fact,
6 justify a conviction of you for a crime, you cannot be
7 found guilty.

8 And I think we have reached agreement that the
9 proposal that I have made addresses the defense's
10 concern without raising the concern that I had with the
11 instruction as proposed by your lawyer.

12 And we started that discussion four minutes
13 before 9:00 because now we're ten minutes after 9:00 and
14 I don't like to have the jury waiting. You were brought
15 in in the middle of the discussion and I think I have
16 fairly summarized what we had talked about.

17 Does anybody want to add anything else to what
18 we've just said?

19 MR. SAXE: No, your Honor.

20 THE COURT: Did you want to take a minute and
21 further -- see if your client has any questions or
22 anything?

23 MR. SAXE: I think he understands it, but --
24 no, that's fine.

25 THE DEFENDANT: Thank you, your Honor.

1 THE COURT: All right. You're welcome.

2 Okay. Are we ready to bring the jury in?

3 MS. GRAHAM: Yes.

4 THE COURT: As soon as my clerk comes back,
5 we'll bring the jury in. There he is. Good.

6 (Jury entered the courtroom.)

7 THE COURT: Good morning, members of the jury.
8 I hope you had a nice weekend, a beautiful New Hampshire
9 weekend, and hopefully we'll have a few more in the
10 weeks ahead.

11 We're ready to go ahead with closing
12 arguments. And the way it's going to work is that the
13 government will go first, then the defendant will have
14 an opportunity to make a closing, and the government has
15 an opportunity for a brief rebuttal.

16 If you're ready to proceed, please go ahead.

17 MS. KONESKY: At the beginning of this trial,
18 my colleague told you that this was a case about
19 manipulation, the defendant's manipulation of
20 14-year-old Mackenzie Harvey for sex.

21 The Court will instruct you on the three
22 elements of the offense, three things the government has
23 to prove for you to find the defendant guilty.

24 First, that the defendant knowingly
25 transported Mackenzie Harvey in interstate commerce;

1 second, that at the time of the transportation,
2 Mackenzie was under the age of 18; and, third, that at
3 the time of the transportation, the defendant intended
4 that Mackenzie would engage in sexual activity for which
5 any person could be successfully prosecuted under
6 Vermont law.

7 Now, the Court will instruct you that taking
8 someone from New Hampshire to Vermont is transportation
9 in interstate commerce.

10 And you've heard evidence about McKenzie's
11 age. She testified that her birthday was in May of
12 2002, making her 14 on April 27th, 2017. And the
13 defendant also knew that Mackenzie was 14. If you
14 recall, in his confession, he stated, what am I going to
15 do with a 14-year-old.

16 Now let's move on to the most significant
17 issue here. Did the defendant transport Mackenzie and
18 did he do so with a purpose of engaging in criminal
19 sexual activity?

20 The judge will instruct you that the sexual
21 activity doesn't have to be the only reason that the
22 defendant took Mackenzie to Vermont. It just has to be
23 one of the main reasons. And to that point, you've
24 heard a lot of evidence about things that happened
25 before April 27th, 2017, things that explain how the

1 sexual relationship between Mackenzie and the defendant
2 came to be and evidence which explains how Mackenzie
3 ended up in Vermont that day.

4 During this trial, you've heard evidence about
5 who Mackenzie Harvey is. Patrick Elmore testified that
6 he met Mackenzie through his church youth group. He
7 described her as a girl with a big heart, but low
8 self-esteem. She has a hearing disability; she had a
9 difficult home life.

10 And Mackenzie told you about her life as well.
11 She also said that her life at that time was difficult.
12 She was having trouble in school, her grandfather had
13 passed away, there were issues at home. Mackenzie had
14 been diagnosed with depression.

15 And you watched Mackenzie as she sat up here
16 and you heard what she said. You saw her cover her face
17 as she used anatomical terms to describe the sex acts
18 that she engaged in with the defendant.

19 You've also heard evidence about McKenzie's
20 mom, Carol Pino, and Frank Brown, another man who lived
21 in their house, and from those you can get some sense of
22 what McKenzie's life was like in Hinsdale.

23 Mackenzie was vulnerable. She was prey to a
24 predator. She was easily manipulated. And in the fall
25 of 2016, the defendant began his manipulation.

1 Mackenzie told you that the defendant was
2 friends with her mom and that he began to spend more and
3 more time at their house in Hinsdale. And she told you
4 that he was nice to her and he bought her things. He
5 bought her coffees and shoes and clothes and he did
6 things for the family.

7 And that kindness paid off when on a hayride
8 Mackenzie got scared and she clung onto the defendant's
9 leg. And he saw that as his invitation. And you heard
10 testimony that shortly after that hayride, the sexual
11 relationship between Mackenzie and the defendant began.

12 How do we know this? Well, because Mackenzie
13 told you in her testimony and the defendant's confession
14 tell the same story. Both Mackenzie and the defendant
15 describe their relationship beginning on the hayride.
16 They both describe their first sexual encounter in the
17 attic at the Hinsdale home. They both described plans
18 to run away together and hiding their relationship. The
19 defendant's confession talked about Carol Pino's
20 knowledge of that relationship and how she held that
21 over his head.

22 Now, take a look at Exhibit 16; this is the
23 letter that Mackenzie said she received from the
24 defendant during their relationship before April of
25 2017. If you love me, you'll say we never had sex and

1 mom is making you say we did. Then after the bullshit,
2 we'll find each other and run away unless we can run
3 away before that ever happens.

4 This letter corroborates both Mackenzie's
5 story and the defendant's confession.

6 Also take a look at the text messages that
7 Mackenzie said she sent to the defendant the day before
8 they left on April 26th. If you have any doubt about
9 the nature of their relationship, look at those texts.
10 It was a sexual relationship.

11 And to be clear, Mackenzie, at this point, to
12 the extent that a 14-year-old is able, was a willing
13 participant. She thought she loved the defendant. But
14 as the judge will instruct you, her consent doesn't
15 matter. It doesn't make the defendant less guilty.

16 And so it's with this background of their
17 relationship that we come to April 27th, 2017.
18 Mackenzie testified and she told you the story. She
19 told you that she expected the defendant to get her that
20 night. She had packed some clothes, she packed her
21 black and white blanket. She went to sleep and she was
22 awoken by rocks being thrown at her window. She opened
23 the window, she climbed down to the defendant, he took
24 her over the train tracks and to his car.

25 The defendant described this exact same story.

1 This is from Exhibit 11e.

2 (Audio recording played.)

3 MS. KONESKY: Mackenzie told you that in the
4 car ride on the way to Vermont, the defendant touched
5 her. She performed oral sex on him.

6 When they got to Vermont, to the filthy
7 run-down motel in disrepair pictured in Exhibit 5, the
8 defendant gave Mackenzie a Corona to drink, he laid out
9 a tarp, and they had sex. As Mackenzie said, he put
10 her -- his penis in her vagina. His sexual activity was
11 at least one of the reasons, if not probably the -- the
12 only reason the defendant took Mackenzie from her home
13 to Vermont that night.

14 Now, other than Mackenzie's testimony, what
15 other evidence do you have to show that this happened?
16 Well, just hours later, that same morning, Patrick
17 Elmore arrived at the property, a property owned by the
18 defendant's sister, and he saw a girl in a pink jacket
19 and a man in the woods. He didn't initially -- he
20 wasn't a hundred percent sure that it was Mackenzie at
21 first, but shortly thereafter he saw that girl again
22 with the same pink jacket and he was sure that it was
23 Mackenzie. And then shortly thereafter the defendant
24 just happens to come driving by those same woods.
25 Coincidence?

1 When Mackenzie's family members waved at the
2 defendant and yelled at him, he didn't stop. He told
3 you he drove right by. If that was really as the
4 defendant claims, because he didn't want to talk to them
5 about a rental issue, does that make any sense? Or does
6 it make more sense that he drove right by because he
7 knew what he had done?

8 The defendant was arrested just a few miles
9 away, taken into custody, and he gave a detailed
10 confession. You should consider the defendant's
11 confession. And here's some -- some -- now, the
12 defendant will tell you, actually, that his confession
13 was false and he says this is because the officers
14 pressured him and he said he just wanted to get back to
15 his cell. And he testified he also wanted to get Carol
16 Pino in trouble.

17 When you listen to that confession, I ask that
18 you do so using your common sense. You heard the part
19 of the confession where the defendant says that the
20 officers pressured him. In his opening statement, the
21 defense attorney called Detective Albright aggressive.
22 Listen to it. Ask yourselves whether Detective Albright
23 sounds aggressive. Think about the long pauses in that
24 conversation. Think about the quiet voices. Ask
25 yourself whether there's anything about that

1 conversation that would make somebody fabricate a
2 confession to appease the officers.

3 And most importantly, consider the detailed
4 confession that the defendant gave. The officers asked
5 him about the night before. And yet it was the
6 defendant's decision to start from the very, very
7 beginning. His own words. Think about the details that
8 he gave that lined up exactly with Mackenzie's details,
9 the first night in the attic, the hayride, the train
10 tracks. He specifically described which room in the
11 hotel they had sex in.

12 Think about the conversations with Carol Pino
13 that he recounted for the officers and the detailed
14 information he gave about how she held her knowledge of
15 this relationship over his head. Listen to this clip
16 where the defendant describes part of the sexual
17 activity.

18 (Audio recording played.)

19 MS. KONESKY: And that clip is also from
20 Exhibit 11e and in that, the defendant gave very
21 specific details. Why did he tell this to the police?
22 Because it was true.

23 And if this isn't enough, think about the
24 physical evidence. Mackenzie testified that the
25 defendant gave her a Corona and, sure enough, the crime

1 scene search team found a Corona in the motel. And it
2 stood out to them because it was one of the only things
3 there that wasn't dusty. It appeared that it had
4 recently been brought there.

5 In the defendant's glove box of his car,
6 officers recovered a cell phone. On that cell phone was
7 a picture of Mackenzie touching herself. Mackenzie
8 looked at the picture and she told you that she took it
9 and she sent it to the defendant. And it was found in a
10 phone in the glove box of the defendant's car.

11 Also in that car officers recovered a used
12 condom. And that leads me to what might be the most
13 damning piece of evidence in this case, which is the
14 letters the defendant sent.

15 Attorney Olmstead testified that he received
16 this letter in 17a from the defendant: Jazzy, please
17 give to Kenzie.

18 Attorney Olmstead testified that he didn't
19 read the letters all the way through, but he saw parts
20 of them. He saw love, I love you; he said that he saw
21 the hearts. He said that he saw Jazzy, please give to
22 Kenzie. He looked at these letters and he identified
23 these letters as the ones that he received.

24 And if you don't believe that, look at Exhibit
25 17, which is the letter that he sent at that time.

1 Enclosed are two handwritten letters that Kurt
2 Carpentino sent to me and asked that I get to you for
3 forwarding to Kenzie.

4 Now, the defendant said that there were no
5 instructions to forward the letters to Kenzie. If
6 that's true, where did Attorney Olmstead get this? And
7 why was the defendant sending letters to Mackenzie's
8 best friend, Jasmine Baker? He did so because he wanted
9 them sent to Mackenzie.

10 Now, let's take a look at those letters in a
11 little more depth. In 17b, in a letter that the
12 defendant -- in which the defendant asks Mackenzie to
13 lie for him, and letters, by the way, that the defendant
14 says were written by somebody else, he includes intimate
15 details. He talks about the hayride, our first kiss,
16 our first love letter, our first night together.

17 In one of the letters which he sends -- which
18 he sent on Mackenzie's birthday, he said, happy
19 birthday. This is somebody who knew when her birthday
20 was.

21 He also, in this letter, discusses the used
22 condom in the car. Who else would have known about the
23 used condom in the car?

24 Read these letters when you deliberate. Use
25 your common sense.

1 And let's also talk about the handwriting.
2 Attorney Olmstead testified that he recognized the
3 handwriting on these letters as belonging to Kurt
4 Carpentino. And he knew that because he has years of
5 experience receiving handwritten letters from Kurt
6 Carpentino.

7 And you'll have these letters when you
8 deliberate. Look at them for yourselves. Compare them
9 to the eviction notice which the defendant admitted he
10 wrote. Compare the spelling, compare the handwriting,
11 the word choice. These letters were written by the
12 defendant.

13 Now, the defendant, when he testified, asked
14 you to believe that Carol Pino somehow concocted this
15 complex scheme because she was upset with him for trying
16 to evict her and that Mackenzie traveled here from her
17 dad's house in Alabama to lie to you to help her
18 mother's scheme.

19 In support, he provided an eviction notice.
20 The eviction notice was only filed with the court in
21 July of 2017, months after the defendant had been in
22 jail. He says it was served on April 20th, but as he
23 admitted, the only thing that you have to go by on that
24 is his word. The only thing that tells you it was
25 served on April 20th is his word.

1 And I'd ask you to consider that in light of
2 the letter on May 8th, 2017, which the defendant also
3 admits to writing to his attorney, Frank Olmstead.

4 In that letter he says for 12 Oak Hill Road
5 and 76 Glen Street, that's the address where Carol Pino
6 and Mackenzie lived, please send a letter requesting
7 rent to be sent to you and ask if they both plan on
8 continuing to rent.

9 If he had evicted Carol on April 20th, why
10 would he send this letter to his attorney on May 8 and
11 why wouldn't he mention the eviction? It makes no
12 sense.

13 Now, Mackenzie testified that at one point she
14 did hear her mother threaten to send the defendant to
15 jail if he tried to evict them. I want you to think
16 about two things. First, if Mackenzie is part of this
17 big conspiracy, scheme, with her mother to set up the
18 defendant, why would she admit to that?

19 And, second, think about what you know about
20 what Carol Pino knew. She did have something over his
21 head. She knew that he had a sexual relationship with
22 her daughter.

23 MS. GRAHAM: Objection, your Honor. Facts not
24 in evidence.

25 MS. KONESKY: There is significant evidence --

1 THE COURT: Wait.

2 I'm -- come up to sidebar.

3 AT SIDEBAR

4 THE COURT: What are you trying to say?

5 Because I'm not understanding it.

6 MS. KONESKY: That the -- the reason that
7 Carol Pino may have said that is because she was aware
8 of the sexual relationship. So she did have something
9 to threaten to send him to jail with.

10 THE COURT: What's the evidence of that?

11 MS. KONESKY: The defendant's confession that
12 Carol Pino knew what was going on and that she had
13 threatened --

14 THE COURT: See, the -- the problem I'm having
15 with this is there's no evidence -- the defendant -- the
16 defendant is saying he's -- his confession is false.
17 Mackenzie never testified that her mother knew about the
18 relationship. You don't need to be doing this. So I
19 mean --

20 MS. KONESKY: You can --

21 THE COURT: I have to say, I have no idea
22 whether she knew about the relationship or not. The
23 only thing I know is that the defendant was -- as I see
24 the evidence, was trying to plant a story and be
25 prepared with a story. I thought that was your case.

1 But your case is actually that Carol Pino knew that they
2 were having a sexual relationship?

3 MS. KONESKY: Well, I don't think it's
4 necessary to find that, but I do think there is
5 evidence. There's the letter, Exhibit 16, where they
6 talk about Carol knowing. But I mean, I don't need
7 to --

8 MR. AFRAME: It doesn't matter.

9 MS. KONESKY: -- push this. Yeah, I can just
10 move on.

11 MS. GRAHAM: I would ask the Court to strike
12 it and instruct the jury --

13 THE COURT: Yeah, I think it's better to do
14 it. I'm just not a -- you're right in that there is one
15 piece of evidence, which is he made a statement in which
16 he said she knew. And that is in evidence. So you're
17 not -- you're not making any --

18 It is true; your client did say that she knew
19 he was having a sexual relationship, right?

20 MS. GRAHAM: Right, but this is the same
21 statement that I think the government's --

22 THE COURT: But is it not in evidence?

23 MS. GRAHAM: His letter is in evidence.

24 THE COURT: Yeah. His -- his confession is in
25 evidence, right?

1 MS. GRAHAM: Correct.

2 THE COURT: And his confession is that she
3 knew about them having a sexual relationship.

4 MS. GRAHAM: Right.

5 THE COURT: All right. So your objection's
6 overruled.

7 CONCLUSION OF SIDEBAR

8 THE COURT: Objection overruled.
9 You can continue.

10 MS. KONESKY: Ladies and gentlemen, when you
11 evaluate the evidence in this case, I ask that you use
12 your common sense. When you do, you'll find that it
13 shows that the 33-year-old defendant, Kurt Carpentino,
14 manipulated 14-year-old Mackenzie Harvey into
15 believing -- somehow believing in her 14-year-old mind
16 that she was his girlfriend.

17 Look at the letter he gave her during their
18 relationship. He promised love, he promised happiness.
19 At some point they planned to run away together. On
20 April 27th, 2017, Mackenzie waited, she packed her
21 things, she woke up to rocks being thrown at her window,
22 and she climbed out with the defendant. They walked
23 over the train tracks and to his car and he took her
24 from Hinsdale, New Hampshire, to Rockingham, Vermont, to
25 the abandoned motel.

1 When they got there, he gave her a Corona, he
2 laid out a tarp, and they had sex. At some point the
3 defendant realized what he was doing, in his own words,
4 was way beyond sane. And he was right.

5 Within a few weeks -- actually, that morning,
6 that next morning, the defendant was apprehended and he
7 confessed and he gave a full and a detailed confession.
8 But within a few weeks, he sent letters to Mackenzie
9 asking her to lie. In those letters, he promised her
10 love, he promised he would listen to her, he promised he
11 would talk to her, not at her. Look at those letters.
12 He replaced the Os in love with hearts to relate to a
13 14-year-old girl. This was the defendant's final
14 attempt to manipulate Mackenzie Harvey.

15 When you review the evidence, I urge you to do
16 so using your common sense. And when you do, I suggest
17 that you will find that the defendant is guilty beyond a
18 reasonable doubt.

19 THE COURT: Thank you.
20 Counsel.

21 MS. GRAHAM: Good morning, ladies and
22 gentlemen.

23 Kurt Carpentino did not sexually assault
24 Mackenzie. He didn't transport her from New Hampshire
25 to Vermont. This case has been about the delivery of a

1 promise, Carol Pino's promise and threat to get Kurt
2 arrested if he evicted them.

3 This case falls on the testimony of a girl who
4 writes letters and journals about dreams and fantasies
5 about boys, who showed signs of some infatuation with
6 Kurt, but who didn't respond.

7 It falls on the testimony of a girl who,
8 despite having so many people in her life, told no one
9 that this was happening. She told no one because it
10 didn't happen.

11 You heard that Mackenzie had a number of
12 resources in her life. She had a counselor; she had a
13 caseworker; she had a doctor who prescribed her
14 medication; people who were there in her life to help
15 her who she saw fairly regularly.

16 She had the Elmores. She called Kim Elmore
17 daily. Do you think that she would not tell her,
18 someone who was so close to her?

19 You also heard that Mackenzie spoke with a
20 woman named Maureen who came to her house. And Maureen
21 asked her, Mackenzie, are you alone with Kurt? No, she
22 said. Mackenzie, does Kurt ever stay here in the house?
23 No, she said.

24 And you heard that Mackenzie went to school
25 and sought out her resource officer there and told him

1 everything is okay at home. Why didn't she tell these
2 people in March of 2017 that Kurt was abusing her?
3 Because the simple explanation is that it didn't happen.
4 So what happened after all of those opportunities and
5 all of those people that she could talk to?

6 Carol Pino got the demand notice. You saw the
7 document, the eviction notice. Pay attention to -- I
8 think it was page 3 or 4. That was the demand notice
9 that was served on April 20th by Kurt. How do you know
10 that? Kurt told you. He testified about it. And, most
11 importantly, you heard Mackenzie testify, yes, I heard
12 my mom threaten Kurt that she would arrest him if he
13 evicted them.

14 So let's talk about the evidence you heard in
15 this case. You heard from Frank Brown. Did he seem
16 like he had any dog in this fight? Did Frank Brown seem
17 like a straight shooter to you? He isn't with Carol
18 Pino anymore. He's moved on with his life. So what did
19 he say that's so important? That he was living there
20 but for a few weeks. He was there and he told you that
21 Kurt never lived at that house and he certainly didn't
22 have a room up in the attic. And he never saw anything
23 unusual between the two of them.

24 Now, Mackenzie testified that during the
25 period of October of 2016 and April of 2017, she had sex

1 with Kurt many places in the house -- in the attic, in
2 the living room, kitchen -- during that period of time,
3 in a house that was full. You heard who was living
4 there at the time. There was Carol, there was Frank,
5 there was the son Michael and his wife and children, the
6 sister and her child, and another guest, Jason. Your
7 common sense tells you that a house that full would have
8 seen something.

9 And what was the quality of Mackenzie's
10 testimony? She wasn't able to provide you with in-depth
11 details. And the details that she did give weren't
12 supported by the evidence.

13 Now, the government told you to reflect on how
14 she reacted when she was on the stand talk about these
15 acts. You'll get a chance to look at the emails. Is
16 that the same person that you see in those emails and
17 the person who testified?

18 Now, you also heard her testify that when she
19 came home from school on April 26th, her mom took her
20 phone away from her and she didn't have a phone when she
21 left. But remember what Detective Solari said; that he
22 looked at that phone, that there were phone calls made
23 at 11:30, up until about 3:00 a.m.

24 And what did Mackenzie say when I asked her if
25 Jazzy was part of this plan, that Jazzy gave her a

1 phone. She denied it. Even when I played her audio,
2 she said, no, that's not me. And then she said, yes,
3 that is me, when I actually showed her video of herself
4 saying that.

5 Now, Detective Solari brought forth some
6 information. He told you that -- about an LG phone and
7 that the phone calls that were made from Mackenzie's
8 phone on April 26th, there were no phone logs, no phone
9 calls, no text messages found on that LG phone that was
10 found in the car.

11 You heard that the government associates that
12 LG phone with Kurt and that number with Kurt, but you
13 also heard Detective Solari tell you that that LG phone
14 was also associated with another email address. What
15 was that email address? Jazzythebomb. What does that
16 suggest to you? That others had access to the phone;
17 that Kurt did not exclusively use that phone.

18 And what about the picture that Mackenzie
19 testified about that was found on the LG phone? You
20 heard Detective Solari explain where that picture was.
21 When you opened up the phone, it wasn't there in the
22 photo gallery. It had been deleted. And so what does
23 that mean? You take a phone and you can take a picture
24 of yourself and then you delete it. That image goes
25 into some memory in that phone. So if I give you that

1 phone, you wouldn't necessarily know that that image was
2 ever there.

3 Why is that important for you? Because you
4 heard testimony that Mackenzie took items from Kurt.
5 And you know that phone was associated with another
6 email address. Kurt testified that he never saw that
7 image and there's no other evidence that Kurt received
8 it.

9 Now, you've heard about statements that Kurt
10 gave to the police. He took the stand and he told you
11 why he said what he said, that the police provided him
12 with a lot of details and that's how he was able to
13 provide details about the case. That's how he knew it.
14 And that he felt compelled to give him -- give the
15 police what they wanted. But he told you on the stand
16 on Friday that he never sexually assaulted Mackenzie or
17 took her across state lines.

18 Now, you also heard about letters from
19 Attorney Olmstead. You never heard who touched those
20 letters before they got to the police. You have no
21 idea, no evidence presented to you, how those got from
22 the attorney to the police.

23 So let's now talk about what you didn't hear.
24 What you don't hear sometimes is more powerful than what
25 is said.

1 You heard Mackenzie tell you that Kurt
2 ejaculated on her. The police made sure to take her to
3 a hospital where there was a sexual assault nurse on
4 staff. The troopers had an evidence collection team.
5 They searched and collected evidence in this case. They
6 collected it from the motel, from Kurt's car, from the
7 hospital. They took cuttings from the car, they took
8 the Corona bottle, a blanket, a used condom, and they
9 took a DNA swab from Kurt. They labeled these items,
10 they tagged them, they placed them in bags ready for the
11 crime lab. Why go through this process? You heard from
12 the evidence collector DNA and fingerprint tests can
13 help determine who committed a crime and who was at the
14 crime scene. You heard and saw no scientific or
15 forensic evidence that Kurt had sex with Mackenzie or
16 that he was in that hotel.

17 The trooper talked a lot about how he saw
18 fingerprints on the passenger side of Kurt's car. Did
19 you hear any testimony, any evidence, that those
20 fingerprints were Mackenzie's? No.

21 Did you see any pictures of tire marks or
22 footprints at the home or at the motel? No.

23 Did the troopers collect a sperm-laden sponge
24 from the motel? No.

25 Did they collect a tarp? No.

1 Remember, Mackenzie agreed that she told that
2 sexual assault nurse that Kurt ejaculated on her, that
3 she took a sponge and she tried to wipe it off, but not
4 all of it came off. And that she had sex on a tarp.
5 There was no sponge, no tarp in evidence.

6 Did the troopers collect any of these smashed
7 phones at the motel? No.

8 DNA tests and forensic science don't take
9 sides, they don't choose positions, they assist in
10 identifying and helping you determine if a crime was
11 committed, who committed the crime.

12 What did you hear about that kind of evidence
13 in this case? What has the government, who has the
14 burden in this case, given you? Silence. And that
15 should speak volumes for you.

16 And lastly I will say about silence, why
17 didn't the government call Carol Pino? Ask yourselves
18 that question.

19 We ask that you return a verdict of not
20 guilty.

21 THE COURT: Thank you.

22 Government's rebuttal?

23 MR. AFRAME: Ladies and gentlemen, I got the
24 first word and I get the last word and I promise the
25 last word will be a lot shorter than the first. So let

1 me just touch on a couple of things that you just heard.

2 The first statement that was made was this
3 case falls on the testimony of a girl. No, it does not.
4 It falls on the statements made by Kurt Carpentino.
5 You've heard his confession. He told you what he did
6 and then he wrote what he did. He wrote it after and it
7 comports with what he wrote before. That's the critical
8 evidence in this case.

9 Now, it was just made -- a point to you was
10 made that the -- that Mackenzie did not tell these
11 people that it was happening in March of 2017.

12 Can I see Exhibit 16 for one second? Would
13 she tell someone in March of 2017 that this was
14 happening? She believed this was her boyfriend. She
15 believed in Kurt Carpentino. She was manipulated by
16 him. And you see in that letter that he says, don't
17 tell them we're having sex -- I'm paraphrasing slightly,
18 but go read Exhibit 16: Do it for me.

19 She would be loyal to him in March 2017. This
20 was her boyfriend. He was instructing her what to do
21 and she was doing it. And I suggest to you she knew it
22 was wrong and it's what she was doing. She was in
23 pretty deep.

24 So it should come as no surprise to you that
25 she didn't tell this list of people in March of 2017.

1 So the idea here, I guess, is that it was
2 somehow related to this eviction, this April 20th
3 eviction, and you're supposed to believe that this was
4 all some kind of big setup, a frame-up. And all the
5 facts or the information that would lead to the
6 frame-up, that was known to Kurt Carpentino when he
7 confessed. They had had the fights about the eviction.
8 That had already all gone on.

9 So there's Kurt Carpentino with the Vermont
10 State Police and instead of saying, this was a frame-up
11 by this girl's mother because we're in some eviction
12 dispute -- that might be the logical thing you'd think
13 he'd do. No, he decides that he's going to implicate
14 somehow the mother in a crime he didn't commit to get
15 her in trouble instead of saying it was a frame-up. He
16 never said that.

17 Frank Brown. That's the testimony you're
18 supposed to rely on? He didn't even know the last name
19 of the guy living in the attic where Kurt Carpentino
20 admits he's living. Really.

21 Phone calls made on the phone that Carol Pino
22 took late at night on April 26th into 27th. What did
23 the defendant say in his confession about Carol Pino?
24 She wanted a relationship with him, but he said, you
25 really want a relationship with me after you know my

1 (sic) daughter's been on me? I'm paraphrasing a little,
2 but that's essentially what he said. Carol Pino very
3 well could have been calling, at all hours of the night,
4 Kurt Carpentino.

5 So this confession, it got whisked away in the
6 statement you just heard and about a sentence, he was
7 pressured by the police. Let's just think about that
8 for a second. He was pressured by the police.

9 What did Albright say? We're going to do a
10 search warrant at the motel, we're going to do a search
11 warrant at the Hinsdale house, we're going to get the
12 videotape from the Jiffy Lube and the Sunoco, we're
13 going to do a DNA kit. I hope that helps -- that works
14 out for you, Mr. Carpentino. Those are things they're
15 going to do.

16 Does that put pressure on a person? I suppose
17 it does if they did it. If the police say, we're going
18 to go do all those different things and those things are
19 going to show that you did it and you really did do it,
20 it might be time to give it up.

21 But flip that over. If you didn't do it and
22 the police said we're going to go do things one, two,
23 three, four, five, wouldn't you say, that's going to
24 exonerate me, go ahead, go do those things. I didn't do
25 it. That's not what he said.

1 And then you have the letters. Those letters,
2 they just tell the whole story. And you're supposed to
3 believe that they somehow are fakes. You're supposed to
4 believe the whole thing was a fake, was a frame-up. If
5 this was a frame-up, it's the greatest frame-up in
6 history. The letters are so good that Attorney
7 Olmstead, someone with -- to use the defense's words --
8 no dog in this fight, said, that's his handwriting,
9 identified the letters. Those letters are from Kurt
10 Carpentino. They're not part of some frame-up.

11 And it just so happened there's a girl in the
12 woods with a guy and the defendant happens to be driving
13 by at the moment and his phone is in the car and the
14 condom's in the back. It's all just -- it's a frame-up?
15 Come on, ladies and gentlemen. It's more manipulation.

16 We come back to where I began. The defendant
17 manipulated this girl and when he got caught, he tried
18 to manipulate her again and that manipulation continued
19 in this courtroom. It's time for the manipulation to
20 stop. The defendant is guilty. Find him so.

21 Thank you.

22 THE COURT: Thank you.

23 All right, members of the jury, I'm going to
24 instruct you now on the law that you will apply in
25 deciding this case.

1 I apologize in advance. I'm going to be
2 reading the instructions. But the good news for you is
3 that you don't need to take notes on the instructions if
4 you don't want to. You can see the mass exodus of
5 people as I tell you I'm going to read jury
6 instructions. They don't want to be here to listen to
7 this. But it's important that you know about it and
8 it's important that you -- I convey the information
9 accurately to you.

10 And so I'm going to read the instructions and
11 you're going to have a copy of them with you in the room
12 when you begin your deliberations. And you'll see I put
13 little headings on each different section, so if you
14 want to say, oh, what did the judge tell us about the
15 burden of proof? There'll be a section on that. Or the
16 elements of the offense and you can just turn to the
17 instructions and read them and discuss them in the jury
18 room to the extent you find it helpful to you.

19 So let me begin.

20 At this stage of the trial, it's my duty to
21 instruct you on the principles of law that you will
22 apply in deciding this case. It is your duty to follow
23 these instructions during your deliberations. You
24 should not single out any one instruction, but instead
25 apply these instructions as a whole to the evidence in

1 this case.

2 You are the sole and exclusive judges of the
3 facts. You must weigh the evidence that has been
4 presented impartially, without bias, without prejudice,
5 without sympathy. You must make a determination as to
6 what the facts are, what the truth is, based on the
7 evidence presented in this case. You will decide the
8 case by applying the law as I give it to you in these
9 instructions and the facts as you find them to be from
10 the evidence.

11 In determining what the facts are, what the
12 truth is, you must necessarily assess the credibility of
13 each witness and determine what weight you will give to
14 each witness's testimony. By credibility I mean the
15 believability or truthfulness of a witness.

16 You should carefully scrutinize the testimony
17 given, the circumstances under which each witness has
18 testified, and every matter in evidence which tends to
19 show whether a witness is worthy of belief or not worthy
20 of belief. Consider each witness's intelligence,
21 motive, state of mind, demeanor and manner while
22 testifying.

23 Consider the witness's ability to see, hear,
24 or know the matters about which that witness has
25 testified. Consider whether the witness had a good

1 memory of what the witness has testified about.

2 Consider whether the witness had any reason
3 for telling the truth or not telling the truth, whether
4 the witness had an interest in the outcome of the case,
5 whether the witness had anything to gain or lose as a
6 result of his or her testimony, whether the witness had
7 any friendship, relationship, or animosity towards other
8 individuals involved in the case, whether the witness's
9 testimony was consistent or inconsistent with the
10 witness's answer own testimony and the testimony of
11 other witnesses. Consider the extent to which, if any,
12 the testimony of each witness is either supported or
13 contradicted by other evidence in the case.

14 After assessing the credibility of each
15 witness, you will assign to the testimony of each
16 witness, both under direct and cross-examination, such
17 weight as you deem proper. You are not required to
18 believe the testimony of any witness simply because that
19 witness was under oath. You may believe or disbelieve
20 all or part of the testimony of any witness. It is
21 within your province to determine what testimony is
22 worthy of belief and what testimony may not be worthy of
23 belief.

24 During the course of the trial, you have heard
25 several government agents testify. You should consider

1 the testimony of a government agent in the same manner
2 as you consider the testimony of any other witness in
3 the case. In no event should you give the testimony of
4 a government agent any more credibility or any less
5 credibility simply because that witness is a government
6 agent.

7 The testimony of a witness may be discredited
8 or, as we sometimes say, impeached by showing that the
9 witness previously made statements which are
10 inconsistent than or -- which are different than or
11 inconsistent with his testimony here in court.

12 Inconsistent or contradictory statements which are made
13 by a witness outside of court may be considered only to
14 discredit or impeach the credibility of the witness and
15 not to establish the truth of these earlier out-of-court
16 statements.

17 You must decide what weight, if any, should be
18 given to the testimony of a witness who has made prior
19 inconsistent or contradictory statements. In making
20 this determination, you may consider whether the witness
21 purposely made a false statement or whether it was an
22 innocent mistake; whether the inconsistency concerns an
23 important fact, or whether it had to do with a small
24 detail; whether the witness had an explanation for the
25 inconsistency, and whether that explanation appealed to

1 your common sense.

2 If a person is shown to have knowingly
3 testified falsely concerning any important or material
4 matter, you obviously have a right to distrust the
5 testimony of such an individual concerning other
6 matters. You may reject all of the testimony of that
7 witness or give it such weight or credibility as you may
8 think it deserves.

9 It is exclusively your duty, based upon all of
10 the evidence and your own good judgment, to determine
11 whether the prior statement was inconsistent, and, if
12 so, how much, if any, weight is to be given to the
13 inconsistent statement in determining whether to believe
14 all or part of that witness's testimony.

15 The fact that the prosecution is brought in
16 the name of the United States of America entitles the
17 government to no greater consideration than that
18 accorded to any other party in litigation. By the same
19 token, the government is entitled to no less
20 consideration. All parties, whether the government or
21 individuals, stand as equals at the bar of justice.

22 The weight of the evidence is not necessarily
23 determined by the number of witnesses testifying on
24 either side. You will consider all the facts and
25 circumstances in evidence to determine which of the

1 witnesses are worthy of belief. You may find that the
2 testimony of a small number of witnesses on a particular
3 issue is more credible than the testimony of a greater
4 number of witnesses on the other side of that issue.

5 In reviewing the evidence, you will consider
6 the quality of the evidence and not the quantity. It is
7 not the number of witnesses or the quantity of testimony
8 that is important, but the quality of the evidence that
9 has been produced that is important. You will consider
10 all of the evidence no matter which side produced or
11 elicited it, because there are no property rights in
12 witnesses or in the evidence that is presented.

13 During the course of the trial you have heard
14 certain statements, arguments, and remarks from counsel.
15 These are intended to help you in understanding the
16 evidence and in applying the law to this case. However,
17 in the event that counsel have made any statements
18 concerning the evidence that are contrary to your
19 recollection of the evidence, then you must take your
20 own recollection as to the evidence.

21 If counsel have made any statements concerning
22 the law that are contrary to my instructions, you must
23 take the law from me. You're not to be concerned with
24 the wisdom of any rule of law. Regardless of any
25 opinion you may have as to what the law ought to be, it

1 would be a violation of your sworn duty to base a
2 verdict on any other view of the law than the law as I
3 give it to you in my instructions.

4 From time to time during the course of the
5 trial counsel have made objections. This is a proper
6 function to be performed by counsel on behalf of their
7 respective clients. You should not concern yourself
8 with the fact that objections have been made, nor with
9 my rulings on those objections. I must rule on
10 objections and have not intended to indicate in any way
11 by my rulings or by what I have said what the verdict
12 should be in this case.

13 In this case, as in all cases, I'm completely
14 neutral and impartial. It's up to you to determine
15 whether the defendant is guilty or not guilty based on
16 the facts as you find them to be and the evidence as I
17 give it to you.

18 The direct evidence in this case consists of,
19 one, the sworn testimony of witnesses, both on direct
20 and cross-examination, regardless of who may have called
21 the witness; two, the exhibits which have been received
22 into evidence; and, three, any facts to which all
23 lawyers have agreed or stipulated.

24 Certain things are not evidence and cannot be
25 considered by you as evidence. Arguments and statements

1 by lawyers are not evidence. What they have said in
2 their opening statements, closing arguments, and at
3 other times is intended to help you interpret the
4 evidence, but it is not evidence. If the facts as you
5 remember them differ from the way the lawyers have
6 stated them, your memory controls.

7 Questions and objections by lawyers are not
8 evidence. Attorneys have a duty to their clients to
9 object when they believe a question is improper under
10 the rules of evidence. You should not be influenced by
11 objections or by my rulings on objections.

12 Testimony that has been excluded or stricken,
13 or that you have been instructed to disregard, is not
14 evidence and may -- must not be considered.

15 Anything you may have seen or heard when court
16 was not in session is not evidence. You are to decide
17 the case solely on the evidence received at trial.

18 There are two types of evidence which you may
19 properly use in deciding whether a defendant is guilty
20 or not guilty.

21 Direct evidence is the testimony given by a
22 witness about what that witness has seen, has heard, or
23 has observed or what the witness knows based on personal
24 knowledge. Direct evidence also includes any exhibits
25 that have been marked and any stipulations which have

1 been agreed to by the lawyers for both sides.

2 Evidence may also be used to prove a fact by
3 inference, and this is referred to as circumstantial
4 evidence. In other words, from examining direct
5 evidence, you may be able to draw certain inferences
6 which are reasonable and justified in light of your
7 daily experience and common sense. Such reasonable
8 inferences constitute circumstantial evidence.

9 The law makes no distinction between the
10 weight to be given to either direct or circumstantial
11 evidence. It's up to you to decide how to weigh the
12 evidence in this case. However, the defendant cannot be
13 found guilty of any crime based upon a hunch or even a
14 suspicion or suspicion, even a strong one, or on what is
15 probably the case. He can -- he can only be found
16 guilty if, on the direct evidence and the reasonable
17 inferences you draw from the direct evidence, you are
18 satisfied that he is guilty of the crime beyond a
19 reasonable doubt.

20 During the course of the trial, I may have
21 instructed you that certain evidence was being admitted
22 for a limited purpose. It's your duty to follow these
23 instructions during your deliberation.

24 The fact that a -- the fact that an indictment
25 has been returned against the defendant is not evidence

1 of the defendant's guilt. An indictment is merely a
2 formal method of accusing an individual of a crime in
3 order to bring that person to trial. It is you who will
4 determine whether the defendant is guilty or not guilty
5 of the offenses charged based upon a consideration of
6 all of the evidence presented and the law applicable to
7 the case. Therefore, you must not consider the
8 indictment in this case as any evidence of the guilt of
9 the defendant, nor should you draw any inference from
10 the fact that an indictment has been returned against
11 him.

12 A defendant, although accused, begins a trial
13 with a clean slate -- with no evidence against him. The
14 law permits nothing but the admissible evidence
15 presented before you to be considered in support of any
16 charge against the defendant.

17 The presumption of innocence alone is
18 sufficient to acquit the defendant unless you are
19 satisfied beyond a reasonable doubt that the defendant
20 is guilty after a careful and impartial consideration of
21 all of the evidence in the case.

22 You have heard that Mr. Carpentino made a
23 statement in which the government claims he admitted
24 certain facts. It is for you to decide, one, if
25 Mr. Carpentino made the statement; and, two, if so, how

1 much weight to give it. In making that -- those
2 decisions, you should consider all of the evidence about
3 the statement, including the circumstances under which
4 the statement may have been made and any facts or
5 circumstances tending to corroborate or contradict the
6 version of events described in the statement.

7 The burden is always on the government to
8 prove guilt beyond a reasonable doubt. This burden
9 never shifts to a defendant. The law does not impose
10 upon a defendant in a criminal case the burden or duty
11 of calling any witnesses or producing any evidence.

12 The law does not compel a defendant in a
13 criminal case to take the witness stand and to testify.
14 No presumption of guilt may be raised and no inference
15 of any kind may be drawn from the fact that a defendant
16 does not testify, because the law does not impose upon a
17 defendant in a criminal case the burden or duty of
18 calling any witnesses or producing any evidence.

19 If, after a careful and impartial
20 consideration of the evidence in this case, you have a
21 reasonable doubt as to whether the defendant is guilty
22 of any charge, you must find the defendant not guilty on
23 that charge. If you view the evidence in this case as
24 reasonably permitting two conclusions -- one consistent
25 with innocence, the other consistent with guilt -- you

1 must adopt the conclusion that is consistent with
2 innocence.

3 You must never find a defendant guilty based
4 on a mere suspicion, conjecture, or guess. Rather, you
5 must decide the case on the evidence that is before you
6 and the reasonable inferences that can be drawn
7 therefrom.

8 The indictment charges that the offenses --
9 the offense at issue was committed on or about a certain
10 date. The proof need not establish with certainty the
11 exact date of the alleged offense when the term "on or
12 about" is used, for, in such instance, it is sufficient
13 if the evidence establishes beyond a reasonable doubt
14 that the offense charged was committed on a date
15 reasonably near the date alleged; that is, a date
16 reasonably close in time to the date upon which the
17 offense is alleged to have occurred.

18 The defendant has been charged with a
19 violation of 18 U.S.C. Section 2423(a), which makes it a
20 crime for a person to knowingly transport an individual
21 who has not attained the age of 18 years in interstate
22 commerce with the intention that the individual engage
23 in any sexual activity for which any person can be
24 charged with a criminal offense.

25 In order for the defendant to be found guilty

1 on this charge, the United States must prove each of the
2 following elements beyond a reasonable doubt:

3 First, that the defendant knowingly
4 transported Mackenzie Harvey in interstate commerce;

5 Second, at the time of the transportation,
6 Harvey was under the age of 18 years; and

7 Third, at the time of the transportation, the
8 defendant intended that Harvey would engage in sexual
9 activity for which any person could be successfully
10 prosecuted under Vermont law.

11 I instruct you that a person is transported in
12 interstate commerce if the person is transported between
13 New Hampshire and Vermont.

14 Sexual activity for purposes of this case is
15 contact between the penis and vulva that involves
16 penetration, however slight, contact between the mouth
17 and the penis, and contact between the mouth and the
18 vulva.

19 Engaging in a sexual act with a child who is
20 under the age of 16 is a crime in Vermont regardless of
21 whether the child consents to the sexual act. A sexual
22 act, under Vermont law, means conduct between persons
23 consisting of contact between the penis and vulva, the
24 mouth and the penis, and the mouth and the vulva.

25 Because it would not be a crime under Vermont

1 law for the defendant to engage in sexual activity with
2 Harvey unless at the time she was under 16, you may not
3 find the defendant guilty unless the government proves
4 beyond a reasonable doubt that Mackenzie Harvey was
5 under 16 when the defendant transported her from
6 New Hampshire to Vermont.

7 A defendant acts with an intention that a
8 person will engage in sexual activity for which any
9 person could be prosecuted if he acts voluntarily and
10 with the specific intention that the person transported
11 will engage in sexual activity for which any person
12 could be prosecuted.

13 The United States does not need to prove that
14 the defendant's sole reason for transporting Mackenzie
15 Harvey from New Hampshire to Vermont was for the purpose
16 that she would engage in sexual activity. A person may
17 have several different purposes or motives for such
18 transportation. The government must prove beyond a
19 reasonable doubt, however, that at least one of the
20 defendant's substantial motivations was for Mackenzie to
21 engage in illegal sexual activity.

22 The principles of law set forth in these
23 instructions are intended to guide you in reaching a
24 fair and just result in this case which is important to
25 all of the parties. You are to exercise your judgment

1 and common sense without prejudice, without sympathy,
2 but with honesty and understanding.

3 You should be conscientious in your
4 determination of a just result in this case because that
5 is your highest duty as officers of the court. Remember
6 also that the question before you can never be: will the
7 government win or lose this case? The government always
8 wins when justice is done, regardless of whether the
9 verdict be guilty or not guilty.

10 When you've considered and weighed all the
11 evidence, you must make one of the following findings:

12 If you have a reasonable doubt as to whether
13 the government has proved any one or more of the
14 essential elements of the crime charged, it is your duty
15 to find the defendant not guilty.

16 If you find that the defendant has proved all
17 of the essential elements of the crime charged beyond a
18 reasonable doubt, then you may find the defendant
19 guilty.

20 The punishment provided by law for the
21 offense charged in the indictment is exclusively my
22 responsibility and you should -- and should never be
23 considered by you in any way at arriving at your --
24 arriving at an impartial verdict.

25 When you retire, you should elect one member

1 of your jury as the foreperson. That individual will
2 act very much like a chairman of a committee, seeing to
3 it that the deliberations are conducted in an orderly
4 fashion and that each juror has a full and fair
5 opportunity to express his or her views, positions, and
6 arguments on the evidence and on the law.

7 The verdict must represent the considered
8 judgment of each juror. Your verdict must be unanimous
9 as to each count. In this case, there's only one count.

10 It is your duty as jurors to consult with one
11 another and to deliberate with a view to reaching an
12 agreement, if you can do so without violence to
13 individual judgment. Each of you must decide the case
14 for yourself, but do so only after an impartial
15 consideration of the evidence in the case with your
16 fellow jurors.

17 In the course of your deliberations, do not
18 hesitate to reexamine your own views and to change your
19 position if convinced it is erroneous. But do not
20 surrender your honest conviction as to the weight or
21 effect of the evidence solely because of the opinion of
22 your fellow jurors or merely for the purpose of
23 returning a verdict.

24 Remember at all times you're not partisans,
25 you're judges, judges of the facts. Your sole interest

1 is to seek the truth from the evidence in the case.

2 If during your deliberations it becomes
3 necessary to communicate with me, you may do so only in
4 writing, signed by a -- the foreperson or one or more
5 members of the jury. Give that note to the marshal and
6 he or she will bring it to my attention. No member of
7 the jury should ever attempt to communicate with me
8 except by a signed writing, and I will communicate with
9 you on anything concerning the case either in writing or
10 orally in the courtroom.

11 Remember you're not to tell anyone, including
12 me, how the jury stands, numerically or otherwise, on
13 the matters you are deciding until you have reached a
14 unanimous verdict or have been discharged.

15 Nothing said in these instructions is intended
16 to suggest or convey in any way or manner what your
17 verdict should be. The verdict is your sole and
18 exclusive duty and responsibility.

19 When you've reached -- arrived at a verdict,
20 notify the marshal and you will be returned to the
21 courtroom where the foreperson will render the verdict
22 orally.

23 Does counsel need to see me with respect to
24 any additional instructions?

25 MS. GRAHAM: No, your Honor.

1 MR. SAXE: No, your Honor.

2 MR. AFRAME: No, your Honor.

3 THE COURT: All right. So we will recess and
4 be -- those exhibits that have been introduced into
5 evidence will be brought in to you, along with a copy of
6 my written charge and the verdict form and you're free
7 to select your foreperson and begin your deliberations.

8 I'm going to direct the clerk to administer
9 the oath to the court security officer.

10 THE CLERK: Please raise your right hand.

11 (Court security officer sworn.)

12 THE COURT SECURITY OFFICER: Yes, I do.

13 THE COURT: All right. Anything else before
14 we recess?

15 THE JUROR: I have a question.

16 THE COURT: Let me -- let me ask, is it a
17 question about the law or what you're doing as a --

18 THE JUROR: What we're doing as jurors.

19 THE COURT: All right. What I suggest you do
20 is when you recess, write it down and sign it and submit
21 it. And I will evaluate what -- what to do after
22 getting your instruction because I -- I'm a little
23 concerned about us having a -- a dialogue about that.
24 I'd rather see the -- your question written out in
25 writing. All right? Is that okay with you?

1 THE JUROR: That's fine. Thank you.

2 THE COURT: All right. So let's -- we'll
3 recess and when the juror has the written question, I'll
4 review it with the parties. Okay?

5 THE CLERK: All rise.

6 Oh, your Honor, excuse the alternates?

7 THE COURT: Thank you. The clerk will advise
8 me I -- you two folks stay right here. Just have a seat
9 there. The rest of you can go in.

10 (Jury excused.)

11 THE COURT: These are -- the last two are the
12 alternates, right?

13 THE CLERK: Yes.

14 THE COURT: All right.

15 So you may know that juries traditionally
16 consist of 12 people. You may have counted and seen
17 that there were 14 people. You were the last two
18 people. You were the alternates. Our practice is not
19 to instruct people on whether they're alternates or not
20 until the very end of the case.

21 Because we have 12 -- the 12 original jurors
22 are able to deliberate, I'm going to excuse you now from
23 further participation in the case with the thanks of the
24 Court.

25 You -- your presence here was necessary. In

1 my experience, we lose jurors in the middle of trial and
2 if we lost a juror in the middle of trial and we didn't
3 have an alternate, we'd have to go back and do the whole
4 process over. So we bring in extra jurors for that
5 purpose.

6 What I would ask you to do, though, is I'm not
7 ready to release you from your oath yet. I'm going to
8 excuse you. You can go back in the jury deliberation
9 room, tell the other jurors that you're -- you're
10 alternates that are being excused and say goodbye, but
11 don't discuss the case with them in any way.

12 Surrender your notebooks, gather your things,
13 and you can leave, but don't discuss the case with
14 anyone else yet. Don't expose yourself to any
15 discussions of the case in the media, don't do anything
16 other than what I've instructed you to do up to now
17 because if we were to lose one of the jurors before the
18 end of deliberations, I might have to bring one of you
19 back. All right?

20 And as soon as the jury has reached a verdict
21 and the jury has been discharged, the clerk will tell
22 you and you are then released from your oath and you're
23 free to do anything that you want to do with respect to
24 the case. But until you hear from the juror -- the --
25 excuse me, my deputy, you are still bound by your oath

1 as a juror.

2 And, again, thank you so much for your
3 service. I know it's a sacrifice and I really do
4 appreciate it. So thank you and you're excused.

5 All right.

6 Thank you, Vinny.

7 (Alternate jurors excused.)

8 THE COURT: So traditionally I give a -- a
9 copy of the indictment to the jury. Many judges don't
10 do that. We would need to do a redacted indictment with
11 just one count here.

12 Do you -- do the parties have a view about
13 whether they would like a redacted copy of the
14 indictment to be submitted?

15 MR. SAXE: Will they be able to tell from that
16 that at some point there had been other counts?

17 THE COURT: No. We would redact it so it
18 would just have the one count.

19 MR. AFRAME: We have no need to submit that
20 unless you want to submit it.

21 MR. SAXE: No, I don't.

22 THE COURT: Okay. I would do whatever -- if
23 the defendant wanted it, I would do it. If not, I -- I
24 have not prepared a redacted indictment. It would take
25 30 seconds to do it. But I do know in consulting with

1 colleagues that it's not a routine matter for the
2 indictment to be submitted to the jury.

3 MR. SAXE: We're not requesting that.

4 THE COURT: Okay.

5 MR. AFRAME: We're not either.

6 THE COURT: All right. And I'll just say to
7 those people who are interns working with the court, if
8 you want to come up to my chambers, I'm happy to talk
9 with you about the case and answer any questions that
10 you have, but only interns who are working with the
11 court. Okay? Thank you.

12 (Recess taken from 10:19 a.m. until 12:59 p.m.)

13 THE CLERK: The Court understands that the
14 jury has reached a verdict.

15 Would the foreperson please stand? The
16 foreperson, please stand and hand your verdict over to
17 the court security officer.

18 Will the defendant please stand?

19 In the matter of the United States of
20 America versus Kurt Carpentino, criminal case number
21 17-cr-157-1-PB, the verdict reads as follows:

22 We, the jury, find the defendant, Kurt
23 Carpentino, guilty as to Count 4 of the indictment dated
24 June 11, 2018, and signed by the foreperson.

25 THE COURT: Does the defendant wish to have

1 the jury polled?

2 MR. SAXE: Yes, your Honor.

3 THE COURT: All right.

4 So, members of the jury, what I'm going to do
5 is I'm going to ask you each individually, I apologize
6 I'll point to help make this clear, and I'll call you 1,
7 2, 3, 4, and I'm going to ask you, was that your
8 verdict. So if your verdict was guilty, you should
9 answer yes; and if it was not your verdict, you should
10 answer no. All right?

11 So juror number 1, was that your verdict?

12 THE JUROR: Yes.

13 THE COURT: Juror number 2, was that your
14 verdict?

15 THE JUROR: Yes.

16 THE COURT: Juror number 3, was that your
17 verdict?

18 THE JUROR: Yes.

19 THE COURT: Juror number 4, was that your
20 verdict?

21 THE JUROR: Yes.

22 THE COURT: Juror number 5, was that your
23 verdict?

24 THE JUROR: Yes.

25 THE COURT: Juror number 6, was that your

1 verdict?

2 THE JUROR: Yes, sir.

3 THE COURT: Juror number 7, was that your
4 verdict?

5 THE JUROR: Yes.

6 THE COURT: Juror number 8, was that your
7 verdict?

8 THE JUROR: Yes.

9 THE COURT: Juror number 9, was that your
10 verdict?

11 THE JUROR: Yes.

12 THE COURT: Juror number 10, was that your
13 verdict?

14 THE JUROR: Yes.

15 THE COURT: Juror number 11, was that your
16 verdict?

17 THE JUROR: Yes.

18 THE COURT: Juror number 12, was that your
19 verdict?

20 THE JUROR: Yes.

21 THE COURT: All right. Thank you. You can be
22 seated, sir.

23 On behalf of everybody, I want to thank you.
24 It is -- it is never an easy thing to be asked to pass
25 judgment on another person. It's a challenge. It's

1 stressful. And I recognize that. And I appreciate your
2 service. And on behalf of everybody here, I want to
3 thank you.

4 I'm going to excuse you now. I'd ask you if
5 you'd remain in the jury deliberation room for a short
6 time. I want to finish some business here and then I'd
7 like to come in and thank you individually and answer
8 any questions you may have. So if you could just wait
9 for me in the jury deliberation room.

10 You are now charged and free from your oath.
11 You can say anything to anybody you want about your
12 deliberations. Okay?

13 THE CLERK: All rise for the jury.

14 (Jury excused.)

15 THE CLERK: Please be seated.

16 THE COURT: The defendant is in custody. I
17 see no reason to change his custody status.

18 Do we have a date for sentencing yet?

19 THE CLERK: September 19th at 10:00 a.m.

20 THE COURT: The defendant will be sentenced
21 September 19th at 10:00 a.m. Parties should consult
22 local rules for other dates bearing on the sentencing
23 process.

24 Is there anything else that either of you
25 needs from me today?

1 MR. AFRAME: No.

2 MS. GRAHAM: No, your Honor.

3 THE COURT: All right. Thank you. That
4 concludes this proceeding.

5 (Proceedings concluded at 1:03 p.m.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

I, Liza W. Dubois, do hereby certify that
the foregoing transcript is a true and accurate
transcription of the within proceedings, to the best of
my knowledge, skill, ability and belief.

Submitted: 11/9/18

Liza W. Dubois
Liza Dubois, RMR, CRR
Licensed Court Reporter No. 104
State of New Hampshire